

IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MATTHEW TOTILO, individually and on  
behalf of himself and all others similarly,  
situated,

Plaintiff,

v.

STEVEN F. HERBERT and  
JAMES P. GROSS,

Defendants.

07-cv-10991 (LAK)

**NOTICE OF MOTION TO ADMIT COUNSEL PRO HAC VICE**

PLEASE TAKE NOTICE that upon the annexed affirmation of Kenneth Elan, Esquire,  
dated DECEMBER 20, 2007, the undersigned will move this Court, for an Order pursuant to Rule  
1.3(c) of the Local Civil Rules of this Court, permitting Robert P. Frutkin, Esquire, to appear as  
counsel on behalf of plaintiff Matthew Totilo, *pro hac vice* for all purposes in this proceeding.

Dated: 12/20/07

Respectfully submitted,

LAW OFFICES OF KENNETH ELAN  
BY:

  
Kenneth Elan

217 Broadway, Suite 606  
New York, NY 10007  
Telephone: 212-619-0261  
Fax: 212-385-2707

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**IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**MATTHEW TOTILO, individually and on behalf of himself and all others similarly , situated,**

**Plaintiff,**

**V.**

**STEVEN F. HERBERT and  
JAMES P. GROSS**

## Defendants.

## AFFIRMATION OF KENNETH ELAN

**KENNETH ELAN**, an attorney admitted to practice before the Courts of the State of New York hereby affirms, under penalties of perjury, as follows:

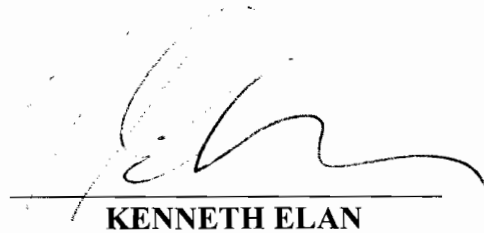
1. I am counsel for the plaintiff Matthew Totilo and am a member in good standing of the bar of this Court. I submit this Affirmation in support of the motion by plaintiff Matthew Totilo that Robert P. Frutkin be permitted to appear, together with myself, as counsel on behalf of plaintiff Matthew Totilo *pro hac vice* for all purposes in this action, including, but not limited to, conferences, pleadings, motion practice, arguments and trial.

2. I am informed and believe that Mr. Frutkin is a member in good standing of the bars of the Supreme Court of Pennsylvania; United States Court of Appeals for the Third Circuit; United States District Court for the Eastern District of Pennsylvania; and the United States Supreme Court. Mr. Frutkin is associated with the law firm of Law Offices Bernard M. Gross, P.C., which has its office at the Wanamaker Building, 100 Penn Square East, Suite 450, Philadelphia, Pennsylvania 19107. See, Frutkin Affidavit and Good Standing Certificate annexed as cumulative Exhibit "A."

3. It is my belief that the requirements of Local Civil Rule 1.3(c) of this Court are fully satisfied.

4. Accordingly, I respectfully request that the motion be granted and the Court sign the proposed order annexed as Exhibit B. The \$25.00 fee will be paid upon presentation of the Order to the Clerk.

Dated: December 20, 2007



**KENNETH ELAN**

**IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>MATTHEW TOTILO, individually and on behalf of himself and all others similarly, situated,</b>	:	
	:	
	:	
	:	
<b>Plaintiff,</b>	:	<b>07-cv-10991 (LAK)</b>
	:	
<b>v.</b>	:	
	:	
	:	
<b>STEVEN F. HERBERT and JAMES P. GROSS,</b>	:	
	:	
	:	
<b>Defendants.</b>	:	

**AFFIDAVIT OF ROBERT P. FRUTKIN  
IN SUPPORT OF MOTION TO ADMIT COUNSEL PRO HAC VICE**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>SS</b>
<b>COUNTY OF PHILADELPHIA</b>	:	

**ROBERT P. FRUTKIN** being duly sworn, hereby deposes and says:

1. I am associated with the law firm of the Law Offices Bernard M. Gross, P.C.
2. I submit this Affidavit in support of the motion for my admission to practice *pro hac vice* in the above captioned matter.
3. I am a member in good standing of the bars of the States of Pennsylvania and Massachusetts, having been admitted to practice in the Supreme Court of Pennsylvania, Supreme Court of Massachusetts, United States Court of Appeals for the Third Circuit and the United States Supreme Court.
4. There are no pending disciplinary proceedings against me in any state or federal court.



Supreme Court of Pennsylvania

**CERTIFICATE OF GOOD STANDING**

***Robert Paul Frutkin, Esq.***

**DATE OF ADMISSION**

***October 10, 1975***

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.



**Witness my hand and official seal**

**Dated: December 24, 2007**

A handwritten signature in black ink, appearing to read "Patricia A. Johnson".

Patricia A. Johnson  
Chief Clerk

**IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>MATTHEW TOTILO, individually and on</b>	:	
<b>behalf of himself and all others similarly,</b>	:	
<b>situated,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>07-cv-10991 (LAK)</b>
	:	
<b>v.</b>	:	
	:	
	:	
<b>STEVEN F. HERBERT and</b>	:	
<b>JAMES P. GROSS,</b>	:	
	:	
<b>Defendants.</b>	:	

**ORDER OF ADMISSION TO PRACTICE PRO HAC VICE**

The motion for admission to practice *pro hac vice* in the above captioned matter is **GRANTED**. The admitted attorney, Robert P. Frutkin, is permitted to argue or try this particular case in whole or in part as counsel.

Each such attorneys admitted to practice *pro hac vice* is required to pay a \$\_\_\_\_\_ attorney admission fee and present this Court to the intake deputy clerk in the Clerk's Office within ten (10) business days.

This Order confirms her appearance as counsel in this case, and this Order will be entered on the Court's docket. A notation of these admissions *pro hac vice* for the above listed case will be made on the roll of attorneys.

The attorney admitted *pro hac vice* must serve a copy of this Order on all other counsel in this case.

Dated:

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**U.S.D.J.**